IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

WRIT PETITION NO.2027 OF 2004

M/s. Welspun India Ltd. Petitioner

vs.

1. Asst. Commissioner of Income-tax,
7(3), Mumbai & ors. Respondents

Mr. K. Gopal for the petitioner.

Mr. R.V. Desai with Ms.S.V. Bharucha i/b. Mr.Pankaj Kapoor for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ

DATED : 2nd September 2004

P.C.

Heard Mr.K.Gopal, the learned counsel for the petitioner and Mr.R.V. Desai, the learned senior counsel for the revenue.

2. The communication dated 25th March 2004 whereby the assessing officer directed the petitioner to get its accounts audited by the special auditor is under challenge.

3. The learned counsel for the petitioner argued that there was no justification for having the accounts of the assessee audited by a special auditor when the assessing officer had not examined the accounts. He

relied upon the cases namely: (i) Swadeshi Cotton Mills Company Ltd. v. Commissioner of Income-tax & Anr., 171 ITR 634; (ii) Bata India Ltd. & Anr v. Commissioner of Income-tax & ors., 257 ITR 622; (iii) Deputy Commissioner of Income-tax & Anr. v. Muthoottu Mini Kuries, 266 ITR 213 and (iv) U.P. State Handloom Corporation Ltd. v. Commissioner of Income-tax & Anr., 245 ITR 192 and submitted (one) that no attempt was made by the assessing officer in examining the accounts and had it been done, the accounts would not have been found complex (two) that the special audit places financial burden on the assessee as the expenses are required to be borne by the assessee and, therefore, without hearing the assessee, the order of approval and the nomination of special auditor could not have been passed by the respondent no.2 (three) that sufficient opportunity was not given to the assessee in furnishing the details which were called for vide communication dated 17th March 2004 and (four) that conditions precedent for passing the order under Section 142 (2A) were not satisfied.

4. On the other hand, the learned senior counsel for the revenue justified the order and submitted that various discrepancies were detected by the assessing officer from the documents and the material furnished by the assessee during the assessment proceedings. He

invited our attention to the facts recorded in the communication sent by the assessing officer to the Commissioner of Income-tax seeking his approval for appointment of special auditor. According to the learned senior counsel, the tax audit report was not reliable. The assessee did not submit (i) basis of valuation of Spinning Division, (ii) copy of valuation report, (iii) unit-wise P & L Account and balance sheet and (iv) division-wise schedule of fixed assets though specifically asked for. The assessing officer also found that proper apportionment of expenses between the Spinning Division and the other divisions of the assessee was difficult and there was huge borrowings and the interest claimed during the assessing year needed to be verified. The learned senior counsel also submitted that on the one hand, the assessee by the communication dated 12th July 2004 sought extension of time for submitting the report and on the other hand after the time was extended approached this Court by way of writ petition and on this ground alone the writ petition deserves to be dismissed. The learned senior counsel relied upon the judgments namely: (a) Jhunjhunwala Vanaspati Ltd. v. Assistant Commissioner of Income-tax & Anr., 266 ITR 657; (b) Living Media Ltd. v. Commissioner of Income-tax & Anr, 255 ITR 268 and (c) Uttaranchal Welfare Society v. Commissioner of Income-tax & ors, 268 ITR 214.

5. We considered the rival submissions. In our considered view, the writ petition does not deserve to be admitted in the light of the conduct of the assessee. As already noticed above, by the communication dated 25th March 2004, the assessing officer directed the petitioner to have its account audited by the special auditor nominated by the respondent no.2. The report as required under Section 142 (2A) was required to be furnished within 120 days from the date of the receipt of the communication. The petitioner received the said communication immediately thereafter. The petitioner seems to have had no grievance in having its accounts audited by the special auditor as directed in the communicated dated 25th March 2004. This is clear from the letter written by the petitioner on 12th July 2004 to the assessing officer seeking extension of time for submitting the report. The said letter is self-explanatory and leaves no manner of doubt that the petitioner accepted the direction of the assessing officer in having its accounts audited through the special auditor, but due to some internal difficulties prayed for extension of time for submitting the report by the special auditor by the end of August 2004. The said letter dated 12th July 2004 reads thus:

"WELSPUN INDIA LIMITED

July 12, 2004

To,
The Asst. Commissioner of Income-tax 7(3),
Room No.643, 6th floor,
Aayakar Bhavan,
Mumbai 400 020.

Sub: Appointment of auditor for special audit u/s.142(2A). A.Y.: 2001-02.

Dear Sir,

Please refer to the letter ACIT-7(3)/Special Audit/2003-04 dt. 25.03.04 received by us from your goodself for conducting special audit u/s. 142(2A) of the company for the Assessment Year 2001-02. M/s.Agarwal & Chhajed wanted to commence the audit at Vapi on 12.07.04, however presently our factory staff are engaged in preparation of quarterly, 30th June, 04' Profit & Loss A/c. and the Balance Sheet which will be subject to Limited Review by the statutory auditors. In addition to this, quarterly Internal audit is also in progress at Vapi factory. The preparation of the board meeting to beheld on or around 27.07.04 is also in progress. The above work is expected to be over by 24.07.04.

We will be able to schedule the visit of special auditors at Vapi factory only after 24.07.04. The auditors may take about two week time and the final audit report may take about 8-10 days thereafter. In view of the above, we request your to kindly give extension of time for submitting the report by the special auditors by the end of August 2004.

We hope your goodself will accede to our aforesaid request. We also assure you of our full co-operation to the special auditors during their special audit and completion of report at Vapi factory.

Thanking you,

Yours truly,
For Welspun India Ltd.
Sd/-
Director/Authorised Signatory"

6. It was only thereafter that on 14th July 2004 that the petitioner lodged the present writ petition. We are afraid, by his conduct the petitioner has disentitled himself from any relief in extraordinary jurisdiction. In view thereof, we do not deem it necessary to go into the diverse aspects on merits canvassed before us.

7. Writ petition is, accordingly, dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)